

**IN THE SIXTH CIRCUIT COURT OF DAVIDSON COUNTY
TENNESSEE AT NASHVILLE**

IN RE:)
)
BRIDGESTONE/FIRESTONE TIRE CASES)
)
_____)
)
THIS DOCUMENT APPLIES TO ALL)
ACTIONS)
)

Case No. 01MD-3

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2002 MAY 10 AM 11:25
RICHARD R. ROOKER, CLERK
D.C.

**ORDER DENYING MOTION TO DISMISS ON *FORUM NON*
CONVENIENS GROUNDS**

Defendant Bridgestone/Firestone, Inc. ("Firestone") has filed a motion asking this Court to dismiss these matters based upon principles of *Forum Non Conveniens* arguing that these cases should more properly be tried in the courts of Mexico. After a thorough review of all briefs, affidavits and exhibits submitted by the parties, as well as the arguments presented by counsel, this Court finds that said motion is not well-taken and should be DENIED.

The first step in the analysis of a *forum non conveniens* dismissal is to determine whether there exists an adequate and available alternative forum for resolution of a dispute, in fact such a motion presupposes the existence of such an alternative forum. See, Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 10 (1947) The defendant has not convinced this Court that the courts in Mexico provide a truly adequate alternative forum that would allow the fair disposition of these cases. This Court has considered the holding by the United States Supreme Court in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981) (which apparently has not been addressed by any Tennessee Appellate Court) and its holding that a Federal trial court should not give conclusive or substantial weight to the possibility of a less favorable remedy in the other forum. Such an opinion dealing with federal law is not binding on this Court but may be considered as persuasive authority.

This Court respectfully disagrees with *Reyno* and finds that a court considering a motion to dismiss based upon *forum non conveniens* should consider whether the plaintiff or defendant would be unfairly treated in the proposed alternative forum. While not conclusive, the fact that a plaintiff would encounter unfair limitations on the presentation of a claim and/or the recovery of damages

provides a basis for determining that an adequate alternative forum does not exist.

In these unique cases that are primarily based upon concepts of product liability, the vagaries of Mexican law and the unique evidentiary obstacles presented by Mexican procedure would unjustly penalize plaintiffs by impeding their ability to fairly present their claims.

Even assuming *arguendo* that such an alternative forum has been established, however, defendant's motion fails. Our Supreme Court has set forth the basic guidelines for application of the doctrine of *forum non conveniens* in ***Zurick vs. Inman*, 426 S.W.2d 767 (Tenn 1968)**. There the Court explained that

where in a broad sense the ends of justice strongly indicate that the controversy may be more suitably tried elsewhere, then jurisdiction should be declined and the parties relegated to relief to be sought in another forum. [emphasis added] **Id., at 769**

The Court established some of the factors that should be considered:

Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Factors of public interest also have place in applying the doctrine. [emphasis added] **Id., at 772**

Clearly the burden rests upon defendant to submit sufficient factual information to prove that it would be unfair to require defendant to proceed in this court. Despite the earnest argument of Firestone, the defendant has simply failed to present sufficient facts that "strongly" convince this Court that a trial in this jurisdiction would be unfair to it. To the contrary, it appears that the interests of justice would be best and most efficiently served by conducting the trials in the cause in Nashville, Tennessee.

The fact that the underlying vehicular accidents occurred in Mexico is not a factor to be considered. **Id. at 773** Also, the nationality of the plaintiffs alone does not require that these cases be tried in Mexico. **Id.**

Among the more important factors are the cost of litigation and access to evidentiary proof. Defendant alleges that since the underlying accidents occurred in Mexico, that numerous reports and records will need to be translated into English. This Court disagrees and finds that the astronomical cost of translating the exceedingly large number of technical documents and the equally daunting task of accurately translating complex technical terms weigh heavily against transferring these actions to the foreign courts in Mexico.

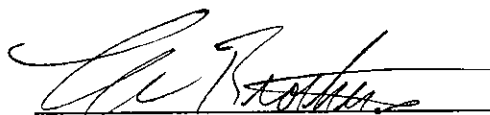
Defendant argues that the difficulties associated with obtaining testimony of Mexican nationals support dismissal. Firestone points out that potential witnesses may be Mexican nationals who may be unwilling or unable to attend trial and that the deposition process in Mexico is difficult. This Court finds that many of the same difficulties would arise even if these cases are tried in Mexico if witnesses reside in different states of Mexico. It is important to note that these actions are premised upon the theory of product liability and that the critical testimony concerning the design and testing will come from English speaking witnesses.

This Court finds that the application of foreign law in these cases, if required, does not present such a formidable obstacle as to require dismissal.

Contrary to the defendant's reference to "scarce" judicial resources, this Court is not so congested that the trial of these cases would cause a disruption of judicial services.

Further, there stand allegations of conspiratorial activities that purportedly occurred in Davidson County. This factor strongly supports trial in this forum.

It is, accordingly, **ORDERED** that the Motion to Dismiss on *Forum Non Conveniens* Grounds filed by Bridgestone/Firestone, Inc. is hereby **DENIED**. All other matters are reserved.



Thomas W. Brothers
Circuit Court Judge